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Supreme Court, U.S.
FILED

No. 991404 FEB 14 2000

OFFICE OF THE CLERK

In the

**Supreme Court of the United States**

October Term, 1999

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Robert H. Moore,

Petitioner

v.

City of Calumet City, Illinois, a Municipal Corporation,

Respondent

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On Petition For A Writ of Certiorari To The Court of Cook County, Illinois Municipal Department, Sixth District; Illinois Appellate Court, First District; and Illinois Supreme Court

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# PETITION FOR A WRIT OF CERTIORARI

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Robert H. Moore
429 Waltham Street
Hammond, Indiana 46320
(219) 931-9011

72pp

## QUESTIONS PRESENTED

The Trial Court maintained that the Respondent had the right to take my property by its power of eminent domain based upon 65 ILCS 5/11-74.4-4. Item 7, Petition Appendix(App.) App. 14 & 13-17 in general. Also, They claimed that *just compensation* was the only prerequisite for taking. As you will be informed later, I shall pointed out why I disagree with this position.

When the Respondent's attorney(s) motion for a dismissal of my Appeal, the Illinois Appellate Court(IAC) granted the dismissal. App. 8-9. In my brief , I pointed out that to take my property by eminent domain, the taking *must* satisfy three(3) prerequisites- authority, *public purpose*, and *necessity*. App. Part IV, 37. 32-38 in general. Item 6, 40-ISSUES PRESENTED FOR REVIEW( Issues 1& 3-p. 6). App. 4 & 37-38. The IAC gave no opinions/rulings etc. App. 8-9. The three must prerequisites above is the reason why I disagree with their just compensation position. Items 5-6, 7-11. vi-vii.

The Illinois Supreme Court denied my Petition for Leave to Appeal and also gave no opinions etc. on any of the three *must* prerequisites. App. 2, 4, 6-7, 37-38. Item 5, 40-CONCLUSION(Last ¶-p.18). The Respondent showed no evidence of necessity or public purpose of the taking. In the Redevelopment Area some properties were not taken(favoritism, discrimination etc.) and not one public construction etc. exists in this area even as of today. Item 38 App. 53; Items 29, 30, & 33 App. 52; Item 6, App. 51.

Constitutionality of the Respondent's taking is one of several other issues I presented to All Lower Courts for consideration/ruling(s) etc. No answers on this issue were given by the above Courts. App. 26-31, 2-7, 4, 8-9. Item 5, 40-CONCLUSION(Last ¶-p.18). Furthermore, I requested the Trial & Reviewing Courts(Lower Courts) to state in writing whether the taking was Constitutional and/or Legal and they gave no response to these requests. App. 2, 4, 6-7, 8-9.

I, also believe my *substantive due process* (**U.S. CONST. Amend. XIV, § 1)** rights were violated by *tax increment finance* laws(TIF)(mainly 65 ILCS 5/11-74.4-1) and the use of this and other similar laws by City of Calumet City, Illinois to take my property by its power of eminent domain. This amendment states that no *state* shall "deprive any person of life, liberty, or *property* without due process of law." App. 4.

"Substantive due process of law means that the government *cannot* enact legislation that is unreasonable and arbitrary." Item 4, p.180 App. 40. For example, I have presented proofs in my Illinois Appellate Court Brief and Argument that the City of Calumet City, Illinois has taken my property to benefit private businesses only and not public use/ purpose. Item 9, vol. 2, pp. C11, C70, C85-90 etc. App. 40 "Laws must be definitive and clear enough that a person of ordinary intelligence does not have *to guess* at their meaning.". Item 4, p. 180 App. 40. In other words, *tax increment finance laws* are too broad to be Constitutional. "If they are not to violate substantive due process, laws as well as the means provided for their enforcement must have a legitimate purpose." Item 4, p. 180 App. 40. I have shown by pictures, letters, newspaper articles in my record and supplemental records that no legitimate necessity and/or public purpose/use of my property warranted taking of my property. At this moment, there are only private constructions in concerned condemn area. Also, there is a private construction immediately adjacent to my taken property. "If a particular statue affects only a certain portion of the population, the law will meet due process requirements as long as it applies *equally* to all person who are in a similar situation." Item 4, p. 180 App. 40. Not all properties in my area were taken, some were not condemn, that is, they are still there today. I pointed out this again by letters, pictures in my four volumes of records of appeal. Item 11, App. 40. 5/6-7, 6/5, & 11/9. Even the properties that were taken by eminent domain, a lot of their owners received huge amounts of money from the City of Calumet City, Ill. for their properties. "If a law *discriminate* between individuals in similar situations, courts apply one of two tests one of two tests to determine whether due

process was violated. Courts apply the 'compelling state interest' test when constitutionally 'suspect' classifications, such as age, race, or sex are involved, or when the law affects a fundamental right such as freedom of religion." Item 4 p. 180 App. 40. Being a Afro-American, I am convinced that some important rights of mine were violated-*it goes with the territory.* Items 13 & 14. App. 40. During the jury trial, the Presiding Judge forbid me to state anything but just compensation or I would be sanctioned or something. Also, I could not get Judges recused because all my recusing motions were denied/ignored. I do not doubt that I may have been subjected to gender/other racial discrimination etc. App. 4. In this paragraph I have tried to demonstrate my case by showing a preponderance of evidences.

Finally, I have found no examples that these *tax increment laws* (TIF) have been tested/challenged for their CONSTITUTIONALITY. Because these laws are passed in over 37 states, I pray that the U.S. SUPREME COURT will rule/interpret on their CONSTITUTIONALITY. Pet. Item 4, viii. Items 14-16, 18. vii.

The Questions Presented are:

1. Are the Tax Increment Financing Laws/Statues(65 ILCS 5/11-74.4-4 e.g.) too broad to be Constitutional ?
2. Did the Trial and Reviewing Courts failed to/refused to /should of considered the three *must prerequisites(authority, public purpose, and above all necessity)* and their cited cases? IV(A)(1) App. 37-38. If so, were my Illinois State legal rights violated by the Trial and Reviewing Courts?
3. Was my Fifth and Fourteenth Amendments(substantive due process of law) § 1 rights violated by the Trial and Reviewing Courts? Item 4, App. 40; pp. 180-181.
4. When Judge Conlon of the Trial Court told me if I said any thing but just compensation in her Court that my testimony would be sanctioned/stricken in a corridor outside of the Court room, was my First Amendment rights(Freedom of Speech) violated by this Judge? Item 4, App. 40; pp. 64-65, 80, 116, 485-486. App. 43-54.

5. Were there any miscarriage of justice and legal malpractice by the Respondent's attorneys and Trial and Reviewing Judges? Items 13 & 14, App. 40.
6. Was the taking of my property proved by a Preponderance of Evidence by the Respondent's attorneys and Trial and Reviewing Judges?
7. Did I prove by a Preponderance of Evidence(Record of Appeal and 3 volumes of Supplemental Records of Appeal) that the Respondent had no right to take my property? App. 43-54. Item 1, 5/6-7, 6/5, & 11/9. App. 40.
8. Since restriction(s) were not present for taking of property by state Tax Increment Financing Laws, will the United States Supreme Court disclose and/or state restriction thereof to help protect the Poor/Defenseless property owners of these United States?
9. Should there be any restriction(s) to TIF LAWS in this nation?

## PARTIES TO THE PROCEEDING

Petitioner in this case is Robert H. Moore, pro se. Petitioner was defendant in the Trial Court and a plaintiff (Appellant) in the Illinois Reviewing Courts.

Respondent is the City of Calumet City, Illinois, a Municipal Corporation. The Respondent was a plaintiff in the Trial Court and a defendant(Appellee) in the Illinois Reviewing Courts.

## TABLE OF CONTENTS


**Page(s)**

QUESTIONS PRESENTED..... i-iv
PARTIES TO THE PROCEEDING.....iv
TABLE OF CONTENTS.....v
TABLE OF AUTHORITIES.....vi-vii
OPINIONS BELOW..... 1
JURISDICTION..... 1
STATUTORY PROVISIONS INVOLVED.....2
STATEMENT OF THE CASE..... 2
A. INTRODUCTION AND SUMMARY... 2-3
B. STATEMENT OF THE FACTS..... 3-4
REASONS FOR GRANTING THE PETITION..... 4
CONCLUSIONS.....5-6
APPENDIX(App.) .....1-55

## TABLE OF AUTHORITIES

**Page(s)**


INHERENT POWER OF EMINENT DOMAIN

1. *Department of Public Works & Buildings v. McNeal*, 33 Ill. 2nd 248, N.E. 266 (1995).....

STATUTORY AUTHORITY

2. *Department of Transportation v. Galesburg National Bank & Trust Co.*, 141 Ill. 2nd 462, 566 N.E. 254, 152 Ill. Dec. 567 (1990).....

3. *Department of Public Works & Buildings v. Keller*, 61, Ill. 2nd 443 (1975).....

4. *Town of Libertyville v. Bank of Waukegan*, 152 Ill. App. 3d 1056, 504 N.E. 2d 1305, 105 Ill. Dec. 787 (2d Dist.) *appeal denied*, 116 Ill. 2d 560 (1987).

PUBLIC PURPOSE

5. *Chicago v. Barnes*, 30 ILL. 2d 255, 195 N.E. 2d 629 (1964).....

6. *Lake Louise Improvement Associatiion v. Multimedia Cablevision Oak Lawn Inc.* 157 Ill. App. 3d 713, 510 N.E. 2d 982, 109 Ill. Dec. 914 (1st Dist. 1987).....

NECESSITY

7. *People ex rel. Director of Finance v. YWCA of Springfield*, Ill. 2d 219, 427 N.E. 2d 70, 55 Ill. Dec. 950 (1980).....
8. *Department of Public Works & Buildings v. Keller, Supra*.....

9. *Illinois State Toll Highway Authority v. Karn*, 9 Ill. App. 3d 784, 293 N.E. 2d 162 (2d Dist. 1973).....

10. *Department of Transportation v. Walker*, 80 Ill. App. 3d 1039, 400 N.E. 2d 956, 36 Ill. 376 (3d 1980).....

11. *Trustees of Schools v. First Bank*, 49 Ill. 2d 408, 274 N.E. 2d 408, 274 N.E. 2d 56 (1971); *Lake County Forest Preserve District v. First National Bank*, 200 Ill. App. 3d 354, 558 N.E. 2d 721, 146 Ill. Dec. 758 (2d Dist.), *appeal denied*, 135 Ill. 2d 557 (1990).....

12. Illinois Code of Civil Procedure(CCP) 735 ILCS 5/7-101 *et seq*.....

13. Cal. Code of Civil Procedure § 170.6.....

**FEDERAL STATUTES**

14. U.S. CONST. Amend. I.....
15. U.S CONST. Amend. V.....
16. U.S. CONST. Amend. XIV § 1.....
17. USCA 1999, GENERAL INDEX, A-Z.....
18. USCA CONSTITUTIONAL, FIFTH AND FOURTEENTH AMENDMENTS.....
19. 28 UNITED STATES CODE § 144

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

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## No. 99-

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Robert H. Moore,
*Petitioner,*

v.

City of Calumet City, Illinois,
A Municipal Corporation,
Respondent.

On Petition for a Writ of Certiorari To the Illinois Supreme Court; Illinois Appellate Court, First District; and Circuit Court of Cook County, Illinois Municipal Department, Sixth District

**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner, Robert H. Moore hereby petition this Court to grant a writ of certiorari to review judgment(s) of the Illinois Supreme Court; Illinois Appellate Court, First District; and Circuit Court of Cook County, Illinois Municipal Department, Sixth District.

**OPINIONS BELOW**

The opinion of the three above Courts are unreported and are reprinted in the Appendix(App.) at 2, 6-7, 8-9, & 29-31.

**JURISDICTION**

The Judgment Order by the Circuit Court(C.C.) was entered on December 18, 1997 Petition Appendix( App.) 29-30. The Order

Vesting Title by C.C. was entered on October 26, 1999. App. 9. The Dismissal Order by the Illinois Appellate Court, First District(IAC) was entered on March 8, 1999. App. 9. The 1st Denial Letter of Petition by the Illinois Supreme Court was dated October 6, 1999(?). App. 2. The 2nd Denial Letter was entered on October 6, 1999(?). App. 7.

## STATUTORY PROVISIONS INVOLVED

Federal Statues which Items 1, 2, 3, & 4, Pet. viii

may be pertinent to this case.

## STATEMENT OF THE CASE

### A. Introduction and Summary

This case is about my attempt to keep my property after almost six decades of family ownership with intermittent hardships with dealings with City Hall during these years. Then the Respondent decides to take a portion of the city and use it for a Redevelopment Area via eminent domain with the use of the Illinois State Tax Increment Financing Laws(TIF). Item 36, App. 45. My property is part of this area.

When I received my Summons, I tried hard to ascertain the services of several attorneys(including a Constitutional attorney) and appraisal experts(including MAI'S). All of them did not offer their services for various reasons(my belief, mainly economics). Items 13 & 14. App. 40 So, I proceeded with litigation as a pro se.

At the Trial Court level, litigation was from 7/8/96 to 3/20/98 approximately(almost 2 years). App. 43-54. During this time attempts of settlement were all failures. To the best my knowledge there was no discovery process. Also, there were

more than three sitting judges, sometimes at alternate times. There were many continuances, mostly by the Respondent's attorneys.

Judge Claudia G. Conlon was the final sitting Judge of Record. But, because I felt the Trial Court was biased for most of the litigation time, I motion for recuse of all Judges and for a change of venue. All motions were either denied or ignored.

The jury trial was questionable. The jury deliberation was done in some room other than the Court room and literally conducted and instructed by Judge Conlon. In my opinion, she with help of the Respondent's attorney decided the lawsuit in favor of the Respondent and all of the jury members signed some kind of paper which I don't think was part of the Record. Oh, I was told during the jury trial that in my testimony, if I mentioned any thing but *just compensation*, I would be sanctioned by her and my testimony would be stricken. May I remind the U.S. Supreme Court that there was no Court Reporter during jury trial and only once during the entire litigation for the Respondent's attorney to keep a record of the court proceedings. Electronic devices(audio, video etc.) of any kind were not permitted in the Court Building. So concrete proof of everything that happened during litigation is quite impossible.

So the judgment and vesting title to my property orders were granted to the Respondent by Judge Conlon. Next steps were my appeals to the Illinois Appellate Court and the Illinois Supreme Court which were dismissed and denied, respectfully.

The main differences between the Trial Court and Review Courts was my introduction of the three must prerequisites(authority, public purpose, and necessity) for taking my property pursuant to the State of Illinois Practice. App. 37-38, IV(A)(1). Unfortunately I didn't discover these prerequisites until after the Trial Court verdicts. Without this discovery, my litigation would have stopped at the end of the Trial Court trial. In addition, from the beginning I began to wonder about TIF because TIF seem too vague to be CONSTITUTIONAL. Item 4, App. 40. pp. 180-181. Thus, the Constitutionality of TIF became another issue. Because there was so much relevant/pertinent material I hope the U.S.

Supreme Court would accept this case and call all the records of the Trial and Reviewing Courts.

### B. Statement of Facts

There were some relevant facts involved. First, I requested opinions/answers etc., in writing, to the practice of establishing that the three prerequisites of authority, public purpose, and necessity were met to determine the validity of the Respondent's taking. Also, second, that these Reviewing Courts state in writing that TIF are/are not CONSTITUTIONAL and WHY?

Now, because I understand the TIF exists in over 37 States and thus I hope the U.S. Supreme Court should interpret the CONSTITUTIONALITY of TIF. The Legality of taking by TIF and Constitutionality of TIF are very relevant facts for me. Items 13 & 14. App. 40.

## REASONS FOR GRANTING THE PETITION

**The rulings by the Lower Courts exalts salient inquiries pertaining to the three must prerequisites(authority, public purpose, and *necessity*) in the state of Illinois to exercise the Respondent's power of Eminent Domain. Also, these courts should have consider the Constitutionality of the Tax Increment Laws(too broad/vague to be interpreted by the average intelligent person let alone below average) of the State of Illinois and my Constitutional Rights which includes my rights due to the First, Fifth and Fourteenth Amendments(my substantive due process of law rights). I believe that the above has National Impact as I will refer to later.**

This Court should permit certiorari to determine/interpret whether the Lower Courts should have considered the three must prerequisites and the Constitutionality of the Tax Increment Laws of the State of Illinois before making their judgments.

The Reviewing Courts had an opportunity to consider the prerequisites because I raised questions thereof in their Courts, but the Trial Court did not have the opportunity because I had no knowledge of these ***musts*** during its litigation, but came upon these ***musts*** a little later.

The Lower Courts also was asked to address the issue of the Constitutionality of the Illinois State Tax Increment Financing Law(s). They did not reply in their decisions their positions verbally or in writing their position.

So I am again asking this Court to give Its position on the Legal and Constitutionality of the Respondent being awarded the title to my property by the decisions of the Lower Courts.

Now returning to the National Impact your rulings/opinions etc. have on my **PETITION FOR A WRIT OF CERTIORARI.** Who in the U.S.A. will be affected the most by rulings of All Courts. Permit me to discuss our government. Our government is called a DEMOCRACY. Democracy to me means rule of the many/majority of its citizens. The majority of the people in this nation are poor. So one may say that this nation should be ruled by the poor.

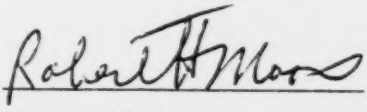
However, the poor does/can not rule in this country because of their condition. Who can deny this fact? The poor without economic means have demonstrated over and over again that they can not adequately defend themselves in the Courts of this country.

Thus, I consider TIF laws an unjust legislation which the poor has no defense because of their poverty. Only the affluent or political powerful have a chance to defend themselves(their properties) in our justice system. Also, TIF type statues in my opinion are anti-poor and pro-rich lawmaking. I have shown this point throughout the litigations in the Lower Courts by all my Record and Supplemental Records on Appeal, briefs, counter briefs and other activities. Again, should this Court accept my case for review, I hope this Court will call up all these Records etc. Items 13 & 14. App. 40.

## CONCLUSION

Wherefore, for the foregoing reasons for granting this petition for writ of certiorari to the mentioned Reviewing Court(s) and questions presented, Petitioner, Robert H. Moore respectfully requests that this Court reverse the orders/decisions/rulings etc. which in effect granted the Respondent the taking of my property by vesting fee simple title to Them.

Respectfully submitted,



Robert H. Moore

Petitioner, pro se

Robert H. Moore

429 Waltham Street

Hammond, Indiana 46320

(219) 931-9011

# APPENDIX

## APPENDIX TABLE OF CONTENTS


**Page(s)**

**ILLINOIS SUPREME COURT EVENTS**

Letter-Removal of Table of Contents from My Petition..... 1

Letter- 1st Denial of My Petition..... 2

Letter-To Chief Justice Charles E. Freeman.....3-6

Letter- 2nd Denial of My Petition..... 6-7

Letter- Extension of Time.....55

**ILLINOIS APPELLATE COURT, FIRST DISTRICT EVENTS**

Order-Dismissal of My Appeal.....8-9

Letter-Mandate to Clerk of Circuit Court..... 10-11

**TRIAL COURT EVENTS**

Summons..... 12

Complaint for Condemnation ..... 13-17

Notice of Motion(October 13, 1999)..... 24-25

Order Vesting Title of My Property to the City of Calumet City, Illinois(October 13 & 26. 1999).....26-28

Judgment Order(July 8, 1996).....29-31

## PRE-TRIAL EVENTS

Ordinance No. 94-72..... 17-20

Legal Description..... 20-23

## IMPORTANT REFERENCES

IILCE..... 32-38

Bibliography..... 39-40

## U.S SUPREME COURT EVENT(S)

Extension of Time.....41-42

## REVISED BIBLIOGRAPHY OF MY APPEALS ETC. TO THE REVIEWING COURTS OF ILLINOIS

Items 1-4..... 43

## INDEX TO THE RECORD

Record on Appeal(Items 1-37).....43-46

## INDEX TO THE SUPPLEMENTAL RECORDS

Volume I(Items 1-52)..... 46-50

Volume II(Items 1-42)..... 50-53

Volume III(Items 1-14).....53-54

429 Waltham Street
Hammond, IN 46320
Date: May 12, 1999

Ms. Juleann Hornyack
Clerk of the Illinois Supreme Court
Supreme Court Building
200 East Capitol Avenue
Springfield, IL 62701

Subject: Request for removal of my Table of Contents' page from my Petition for Leave to Appeal.

Please remove my Table of Contents' page in order to meet the twenty page limit for my Petition suggested during a phone conversation with Mr. Rob Schuller on May 11, 1999 about 3 p.m. A copy of this letter will be mailed to the Defendant's Attorney also on May 12, 1999.

Sincerely,

"s/Robert H. Moore"
Robert H. Moore, pro se
Case No. 87234

**SUPREME COURT OF ILLINOIS**
**CLERK OF THE COURT**

87234

SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035
October 6, 1999

No. 87234-Robert H. Moore, petitioner, v. City of Calumet City, Illinois, respondent, Appellate Court, First District.

The Supreme Court today **DENIED** the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1999.

Petitioner comment: In the Appellate Court, decision(s) was/were signed by JUSTICE(S), therefore is the above *denial* without signature(s) official or legitimate?

429 Waltham Street
Hammond, IN 46320
Case No. 87234

Honorable Chief Justice Charles E. Freeman
Illinois Supreme Court
Supreme Court Building
200 East Capitol Avenue
Springfield, Illinois 62701

Subject: Requests for signature(s) by You or other Illinois Supreme Court Justices on all future letter(s) **DENYING/GRANTING** my petition for leave etc. and reconsideration of the **DENIAL** of my petition for leave(enclosed letter) which would grant/accept my petition for leave to appeal. Also, a request to make and exception by adding back my Table of Contents(another enclosed letter) to my petition.

Dear Honorable Chief Jusstice,

Please send another letter denying my petition signed by *You* and/or other Supreme Court Justice(s). Enclosed is a copy of a letter from someone in your office with absolutely **no** signatures. Since all of my correspondences with Illinois Appellate Court, First District were signed by Appellate Justice(s), I thought it was odd that the Illinois Supreme Court did not sign their correspondences in the same manner. Furthermore, such a signing would effect legitimacy to the denial for possible future use. May I add Mr. Rob Schuller said by phone that no signature denials were standard procedure. So, please send me another denial of my petition with signatures of Illinois Supreme Court Justice(s) or Equivalent(s). So who did write this letter of denial of my petition for leave to appeal? Where is the validity and/or reliability of this *denial* without any signature(s). In other words, do **YOU** agree/concur or not agree/concur with this denial of my petition?

If the signature request is granted and the denial of my petition still is in effect, I am moving that the Ill. Supreme Court reconsider the denial and reverse it by accepting my petition for appeal for several reasons. First, I believe some very strong legal and constitutional issues/arguments should be addressed. In my briefs at the Ill. Appellate and Supreme Court levels, I pointed out that legally the three must prerequisites of *public purpose, necessity, and thus eminent domain* were not present(particularly public purpose and necessity). The Ill. Supreme Court would have to accept and study all my briefs during this litigation to get the impact and picture of my position. So, for now, I hope the Court will change its mind and if that's the case, please inform me of same.

Now, I am also requesting that COURT make a possible reasonable exception to the page rule. My petition had one too many pages and Mr. Schuller suggested removing my table of contents and I agreed. But I am now requesting the Court to replace it to help insure continuity. If You still have to remove a page or more, please remove page(s) 35 or page with the one word APPENDIX on it in the appendix section of the petition. If I did not misinterpret Rule 341(a), I am permitted 75 pages for my petition and I counted about 56 pages for my petition and I counted about 56 pages in mine. Also, I am enclosing a copy of the table of contents. Again, please advise.

Constitutionally, according to the Fifth Amendment, provides that no person shall "be deprived of life, liberty, or property without due process of law." My Fifth Amendment(Fourteenth Amendment too) Rights may have been violated for several reasons. First, the opponent's use of the Act or Law(65 ILCS 5/11-74.4-1) may be too **broad** in meaning to constitutional. The interpretations may be too astronomically irrelevant. Also, my substantive due process rights may be violated because this due process means that the government cannot enact legislation that is reasonable and arbitrary. Thus, any type of vaqueness, doubt, unclearness to the average intelligence to the point where one has to guess at the wording of the Act denies substantive due process of law. Furthermore, I could not find any case where this Act was interpreted as constitutional. I understand

that this Act or similar ones have been enacted in over 37 states. Please advise.

Some more possible violations of my substantive rights are present. In my briefs I pointed out that the application of the Act was not equally applied to me as other persons in this similar situations. Also, that this discriminated against me because other people in similar situations were allowed to keep their properties, received outrageous settlements etc. And then there is the "rational basis" test, that is, did the various Courts determine whether the applicable law is reasonably related to legitimate government interest(3 must prerequisites mentioned above)? I don't think one will find any of the above in all of the various records. Another possible violation of my substantive due process rights(maybe the most serious one) was the repeated insistence by all the **LOWER COURT JUDGES** was that the one and only one prerequisite for taking my property was *just compensation*. I *totally/emphatically/categorically etc.* disagree with this opinion.

In addition to requesting Justices' signatures etc., I am requesting reason(s) from Illinois Supreme Court for these result(s). Without reason(s) for judicial judgments etc., where is my due process?, where is my justice(my day in court). Again, please advise.

Another concern I have with the Court's practice is the timeliness of notice of denial of my petition filing date is May 5, 1999. I have been expecting three copies of **ANSWER** from my opponent fourteen days after this date. As of now(October 16, 1999) I have not received these copies. Instead six months later, I get an unsigned letter of denial. I believe my opponents as a result of this fact of Non-compliance of 14 days for them to submit their **ANSWER**(approximately by May 20, 1999) is ground(s) for the COURT to reverse the decision of the [Illinois Appellate Court, First District](Illinois Supreme Court). I repeat, where is my due process and other justice(s).

With all that is been going on since the beginning of litigation, as a poor person I am wondering if there is justice/citizen ship

etc. in this United States of America. Thus, if any irregularities occur in Your office, I hope they will soon be corrected.

After I completed the above letter, I received also enclosed, a letter of a Notice of Motion to vest title of my property to my opponent. The date of this order is October 26,1999. Please read this Notice for all necessary details. Because I plan to make the Court [date] mentioned in this letter, I am requesting You to reply by letter so that I may present it to this lower Court at the specified date. By the way, the timeliness of this Order date(October 26, 1999) and the mandate of your Court to be [issued]to the Appellate Court date(October28, 1999) are *suspect.* What's been going on between going on between my opponent's attorney(s) and Your Court, if anything? Also, I request this reply for future appealing if necessary and possible.

Sincerely,

"s/ Robert H. Moore"
Robert H. Moore, pro se

Cause No. 87234

STATE OF ILLINOIS
SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of September, 1999.

Present: Charles E. Freeman, Chief Justice

| | |
|---|---|
| Justice Benjamin K. Miller | Justice Michael A. Bilandic |
| Justice James D. Heiple | Justice Moses W. Harrison II |
| Justice Mary Ann G. McMorrow | Justice S. Louis Rathje |

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On the sixth day of October, 1999, the Supreme Court entered the following judgment:

| | |
|---|---|
| Robert H.Moore,<br>Petitioner | Petition for Leave to Appeal |
| | From Appellate Court, First District 1-98-0059 |
| v. | 96M6003362 |
| Calumet City, Illinois,<br>Respondent. | |

The Court having considered the Petition to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is **DENIED.**

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I
Have hereunto subscribed my
Name and affixed the Seal of
of Said Court, this twenty-
eight Day of October, 1999
"s/ Juleann Hornyack", Clerk,
Supreme Court of the State
of Illinois

**IN THE APPELLATE COURT OF ILLINOIS**
**FIRST JUDICIAL DISTRICT-FIRST DIVISION**

---

City of Calumet City, a Municipal Corporation,
Plaintiff-Appellee,

| | | |
|---|---|---|
| | v. | ) No.1- |
| | | ) 98- |
| | | ) 0059 |
| Robert Moore, Elizabeth Moore, | | ) |
| NON-RECORD CLAIMANTS, | | ) |
| And UNKNOWN OWNERS. | | ) |
| Defendant-Appellant. | | ) |

**ORDER**

This cause coming to be heard on Appellee's Motion to Dismiss the Appeal, the Court being fully advised in the premises;

**IT IS HEREBY ORDERED** that the Appellee's Motion to Dismiss the Appeal is **granted.**

"s/ Michael J. Gallagher"
JUSTICE

"s/ John P. Tully"
JUSTICE

"s/ Margaret O. Frossard"
JUSTICE

ORDERED ENTERED:
March 8, 1999

**Error comment(s):** In the above Order, the term Plaintiff-Appellee should be **Defendant-Appellee** and the term Defendant-Appellant should be **Plaintiff-Appellant.** These possible errors belong to the opponent's attorneys and Illinois Appellate Court, First District.

Clerk's Office
Appellate Court, First District
State of Illinois
160 N. LaSalle
Suite 1400
Chicago, IL 60601

11/12/99

Honorable Aurelia Pucinski
Richard J. Daley Center
Room 1001
Chicago, IL 60602

Re: Moore, Robert H. v. City of Calumet
Appellate Court No. 1-98-0059
Trial Court No. 96M6003362

Dear Honorable Pucinski;

Attached is the Mandate of the Appellate Court in the above entitled cause.

We are sending the attorneys of record a copy of this letter to inform them that the mandate of the Appellate Court has been filed with you.

Gilbert S. Marchman
Clerk of the Appellate
Court, First District,
Illinois

Cc. Robert H. Moore
429 Waltham Street
Hammond, IN 46320

My comment: I received **no** mandate attachment. R.H.M.

IN THE COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, SIXTH DISTRICT

| | | |
|---|---|---|
| CITY OF CALUMET CITY, | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | 96M6 3362 |
| | ) | |
| ELIZABETH MOORE | ) | |

ROBERT H. MOORE, )
NON-RECORD CLAIMANTS )
And UNKNOWN OWNERS. )

**SUMMONS**

To each defendant; SEE ATTACHED SERVICE LIST

YOU ARE SUMMONED and required;

1. To file your written appearance by yourself or attorney and pay the required fee in Room 119; 14501 S. Kedzie; Markham, Illinois on 8-8-1996 at or before 9:30 a.m. on that date.

2. To file your answer to the complaint in Room 119, at or Before 9:30 a.m. on that date as required be ¶ 3(d) in the notice on the reverse side(MS. ELIZABETH AND MR. ROBERT H. MOORE; 429 WALTHAM STREET, HAMMOND, IN 46320.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF IN THE COMPLAINT, A COPY OF WHICH IS ATTACHED(BELOW)

This summons may not be served later than 3 days before the day for appearance.

WITNESS JUL 8 1998 AURELIA PUCINSKI,
"s/Aurelia Pucinski",
Clerk of Court
Date of Service_____
_____,19___

**"COMPLAINT FOR CONDEMNATION**

FILED
JUL 8 1996
AURELIA PUCINSKE
CLERK OF CIRCUIT COURT

NOW COMES the Plaintiff, City of CALUMET CITY, a Municipal Corporation, by and through its attorneys, GULLOTA & KAWANNA, and respectfully states;

1. The Plaintiff, CITYOF CALUMET CITY, is a Municipality as defined by Illinois Municipal Code, 65 ILCS 5/1-1-2.

2. Under and by virtue Illinois Municipal Code, 65 ILCS 5/11-74.4-4, and all other applicable provisions of said Illinois Municipal Code, the Plaintiff has adopted pursuant to ordinances of the CITY OF CALUMET CITY passed December 21, 1994,(a copy of which is attached and identified as Exhibit "1").

3. That pursuant to the CITY OF CALUMET CITY Tax Increment Redevelopment Area Plan and Project, the Plaintiff is engaged in acquisition of Propertied located within the Redevelopment Plan and Project.
4. In order to achieve the objectives by the Redevelopment Plan and Project, the Plaintiff is further engaged in the demolition or removal of certain structures or buildings, the renovation or rehabilitation of others, and the construction of certain structures or buildings, all located within the Redevelopment Plan and Project.

5. Are private property and the persons hereinafter Mentioned in connection therewith are, as far as Plaintiff has been able to learn, the persons who owns or otherwise are interested in the same or claim to some interest therein.

6. The acquisition, work and improvement is a public work, is for public use, and constitutes a public purpose , namely a Tax Increment Redevelopment Project Area Redevelopment Plan and Project.

7. Plaintiff, under the Provisions of Illinois Municipal Code, 65 ILCS 5/11-74.4-4, is authorized to acquire for the purposes aforesaid, the fee simple title or such lesser

interest as may be desired to the lands, rights, or other property hereinafter described.

8. The compensation to be paid by the Plaintiff for or In respect to each tract of property sought to be appropriated or damaged or the above-mentioned purpose cannot be agreed on between then Plaintiff and the parties interested therein although Plaintiff has attempted to effect such an agreement; and the Plaintiff, therefore, is authorized to proceed to acquire said land, rights, or other property through the exercise of the right of eminent domain laws of this State.

9. The Plaintiff now seeks to acquire under the eminent domain laws of this State, for uses and purposes aforesaid, the fee simple title to the real property in Cook County, Illinois, hereinafter described in numbered parcel. The names of all Persons interested in each number parcel as owners or otherwise, as appearing of record, or as far as is known to the Plaintiff, all of whom are hereby made parties defendant to this Complaint, are as follows:

Lots 24 and 25 in Block 2 in Snydacker And Amb in Illinois Addition in Section 8, Township 36 North Range 15, East of the Third Principal Meridian, in Cook County, Illinois.

ADDRESS OF PROPERTY:

Southeast Corner of Ingraham & Plummer , Calumet City, IL 60409

PERMANENT TAX
NO. 30-08-001-0000

Interest Sought:

Fee Simple

Owner of Record:

ELIZABETH MOORE

Taxpayer:

Robert H. Moore

Parties Otherwise Interested:

NON-RECORD CLAIMANTS,
UNKNOWN OWNERS

10. In addition, to persons designated by name herein, There are other persons who have or claim some right; title, or in lien in, to or on the real estate, or some parts thereof, in this Petition described, and the name of each persons are made parties defendant to this action by the name and description of Unknown Owners.

WHEREFORE, your Plaintiff prays that the usual process of summons to be issued against each and all of the above-described Defendants according to law, commanding them to be and appear before this Court on the return day of said summons, and that this notice according to the law may be given to the owners of and the parties interested in and to be ascertained and determined according to the statue for the fee simple title to the property sought to be acquired and to take such proceedings and enter such Orders as necessary, ordering that Plaintiff enter on such property and use the upon payment of full compensation to the parties entitled hereto, or to the County Treasurer, within such reasonable time as is fixed by the Court and that the Court retain jurisdiction of this cause to enter such further Orders as

may be necessarily in this cause, Including such Orders an may be necessary to put the Plaintiff into possession of subject property.

PLAINTIFF DEMANDS TRIAL BY JURY

GULOTTA &
KAWANNA

BY "s/ Illegible'
ATTORNEY FOR
PLAINTIFF

IN THE CITY BOARD OF THE
CITY OF CALUMET CITY, ILLINOIS

ORDINANCE NO. 94-72

**AN ORDINANCE ADOPTING TAX INCREMENT FINANCING FOR THE CITY OF CALUMET CITY, ILLINOIS**

---

WHEREAS, the City of Calumet City, Cook County, Illinois desires to adopt tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, appearing as Chapter 65 Ill. Compiled Stat. Section 5/11-74.4-1 *et seq.* As amended,(hereinafter referred to as the "Act"):

WHEREAS, the City of Calumet City has approved the City Tax Increment Redevelopment Area Redevelopment Plan and Project and designated the City of Calumet City Tax Increment Redevelopment Project Area pursuant to the provisions of the Act, and the otherwise compiled with other conditions precedent required by the Act.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CALUMET CITY, COOK COUNTY, ILLINOIS, as follows:

SECTION 1

Tax increment financing is hereby adopted in respect to the City of Calumet City Tax Increment Redevelopment Project Area Plan and Project approved and adopted pursuant to Ordinance of the City of Calumet City passed December 21, 1994 in respect to the Calumet City Tax Increment Redevelopment Project Area described in Exhibit "A" attached to the Ordinance, which Redevelopment Project Area was designated by Ordinance passed by the City Council on December 22, 1994.

SECTION 2

The ad valorem taxes arising from levies upon taxable real property in the City of Calumet City Tax Increment Redevelopment Project Area by taxing districts, and tax rates determined in the manner provided in Paragraph(c) of Section 5/11-74.4-9 of the Act each year after the effective date of this Ordinance until redevelopment project costs have been paid, shall be divided as follows:

(a) That portion of taxes levied upon each taxable lot,

block, tract or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the City of Calumet City Tax Increment Redevelopment Project Area, shall be paid by the County Collector the respective affected taxing districts in the manner required by law in the absence of the adoption of tax increment allocation financing.

(b) That portion, if any, of such taxes which is attribut-Able to the increase in the current equalized assessed valuation of each lot, block, tract, or parcel of real property in the Redevelopment Project Area over and above initial equalized assessed valuation in the City of Calumet City Tax Increment Redevelopment Project Area shall be allocated to, and when collected, shall be paid to the City Treasurer who shall deposit said funds in a special fund called "The Special Tax Allocation Fund" of the municipality for the purposes set forth in the City of Calumet City Tax Increment Redevelopment Project Area Plan and Project referred to in Paragraph 1 of this Ordinance.

**SECTION 4**

This Ordinance shall be in full force and effect from and after its passage, approved and publication as provided by law.

**SECTION 5**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

ENACTED BY THE CITY COUNCIL OF THE CITY OF CALUMET CITY, ILLINOIS ON THE 21ST DAY OF DECEMBER, 1994, ON MOTION OF ALDERMAN ZIMMERMAN AND THE SECOND OF ALDERMAN BUBLICH AND THE FOLLOWING

ROLL CALL VOTE 6 AYES, 0 NAYS, O ABSTENTIONS AND I ABSENT

APPROVED BY ME
THIS 21 DAY OF
DECEMBER 21,1994
"s/ Jerry P. Genova"
MAYOR

ATTEST:

"s / Michelle Markiewicz Qualkinbush"
CITY CLERK

Ordinance No. 94-72

Exhibit A

## LEGAL DESCRIPTION

That part of the South West ¼, of Section 5, Township 36 North, Range 15 East of the Third Principal Meridian, the North West ¼, the fractional North East ¼, the South West ¼ of Section 8, Township 36 North, Range 15 East of the Third Principal Meridian bounded and described as follows: beginning at the south West corner of the said North West ¼ of Section 8; thence North along the West line of said North West corner of said North West ¼(said North West corner also being the South West ¼ of Section 5); thence continuing North along the West line of said South West ¼ to its point of intersection with the Northerly line of the Grand Calumet River, thence Easterly and South Easterly along the Northerly and North Easterly line of the said Grand Calumet River to its point of intersection with the

South line of the said South East ¼ of Section 5(said South line also being the North Line of the said North West ¼ of Section 8); thence East along the North line of said North West ¼ of Section 8 to the North East corner of said North West ¼(said North East corner also being the North West corner of said fractional North East ¼ of Section 8); thence continuing East along the North line of said fractional North East ¼ to South East corner thereof (said South East corner also being the North East corner of said fractional South East ¼ of Section 9); thence continuing South along the East line of said fractional South East ¼ to the South East corner thereof, thence West along the South line of said fractional South East ¼ a distance of 383 feet more or less to West line, a extended South of Douglas Avenue; thence North along said extended West line, and the said West line across 153rd Street and Sibley Boulevard to the point of intersection with the Northerly end of Lot 33 in Block 5 of Snydacker and Ambs' Illinois Addition to Hammond, being part of the North ¼ of the South East fractional ¼ and the North East fractional ¼ South East of the Calumet River of said Section 8 according to the plat thereof recorded July 20, 1888 ;(said Northerly line of Lot 33 also being the Southerly line of a 18 foot North Westerly and South Easterly public alley in said Block 8); thence North Westerly along said Southerly line, the said Southerly line extended across 16 feet North and South public alley in said Block a5 and extended across Forsythe Avenue of said 16 foot North Westerly and South Easterly public alley to the North East corner of lot a4a4 in Block 5 in said that Snydacker and Amb's Illinois Addition; thence North Westerly along the Southerly line, the Southerly line extended across a North and South 18 foot public alley in said Block 5 and extended across Ingraham Avenue of a North Westerly and South Easterly 18 foot public alley within said Block 5 to the North East corner of Lot 56 in Block 4 in said Snydacker and Amb's Illinois Addition, thence along the Southerly line and Southerly line extended across a North and South 18 feet alley in said

Block 4 of a North Westerly and South Easterly 16 feet public alley in said Block 4 to the West line of Wentworth Avenue; thence South along the said West line of Wentworth Avenue to its intersection with South Westerly line, extended South Easterly of Garfield Avenue; thence North Westerly along said extended South Westerly line and the said South Westerly line extended across Lincoln Avenue of Garfield Avenue to the East line of Freeland Avenue; thence North along said East line to its intersection with the Southerly line extended South Easterly of a North Westerly and South Easterly 16 feet public alley in Block 1 and Fulcher's Addition to Hammond, a subdivision of part of the West ¼ of the North West ¼ of said Section 8, according to the plat thereof recorded as Document No. 1358942; thence North Westerly along said extended Southerly line, the said Southerly line extended across 2 other alleys in said Block 1 and said Southerly line extended across Price Avenue of said North Westerly and South Easterly 16 feet public alley to the Westerly line of said Price Avenue; thence, continuing North Westerly along the Southerly line and said Southerly line extended across a North and South 16 feet public alley of a North Westerly and South Easterly 16 feet public alley in Block 2 of said Fulcher's Addition to Hammond to the East line of Hirsch Avenue; thence South along the East line and said East line extended across Harding Avenue and Sibley Boulevard of said Hirsch Avenue to the South line to the point of beginning in Cook County, Illinois.

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

**CERTIFICATION**

I, the undersigned, do hereby certify that I am duly qualified and acting Clerk of the City of Calumet City, in the County and State aforesaid, and such Clerk, I am

the keeper of the official journal, records, and files of the City Board or Trustees of said City.

I, so further certify, that the attached and foregoing is a full, true and correct copy of an Ordinance entitled:

ORDINANCE NO. 94-72

AN ORDINANCE adopting Tax Increment Financing for the City of Calumet City, Illinois

As adopted by the City Council of the City at its legally convened meeting held on Wednesday, Dec. 21, 1994, and as signed by the Mayor of said City on the 21st day of December, all as appears from the official records of said City, in my care and custody.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the corporate seal of said City of Calumet City, Cook County, Illinois this 21st of December, 1994.

"s/Michelle
Markiewicz
Qualkinbush"

City Clerk
City of Calumet City
Cook County, Illinois

SEAL:

**EXHIBI "A"**

NOTICE OF MOTION

To: Mr. Robert H. Moore
429 Waltham Street
Hammond, Indiana 46320

On October 26,1999 09:00 a.m., or as soon thereafter as counsel may be heard, the undersigned will appear before the Honorable Claudia Conlon or any judge sitting in his stead, in the courtroom usuallyl occupied by her at Room 207, 16501 S. Kedzie Parkway, Markham, Illinois, and then there move to have the Order Vesting Title, attached hereto, entered at which time and place you may appear if you so desire and request immediate hearing.

_____

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

CERTIFICATE OF SERVICE

Under the penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned served the above and foregoing Notice or other instrument and any attached pleadings on the parties indicated above by depositing in the U.S. Mail chute at 1200 Ring Road, Calumet City, Illinois 60409, a true and correct copy thereof in a sealed envelope, first-class postage prepaid, addressed to the said person(s) to whom said Notice or other instrument is directed on October 13, 1999 at 05:00 p.m.

"s/ no signature"
Karen R. Jocha

| | | |
|---|---|---|
| STATE OF ILLINOIS | ) | |
| | ) SS | |
| COUNTY OF COOK | ) | |

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, SIXTH
DISTRICT

| | | |
|---|---|---|
| CITY OF CALUMET CITY, a Municipal Corporation, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | NO. 96M6 3362 |
| | ) | |
| Elizabeth Moore, Robert Moore NON-RECORD CLAIMANTS, And UNKNOWN OWNERS, | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER VESTING TITLE**

This cause coming to be heard for immediate vesting of title in Plaintiff to a certain parcel of property which is the subject matter of this cause and it appearing to this Court that on the 4th

day of March, 1998, it found, adjudged, and ordered the amount of $6,500.00 less any liens for taxes or other encumbrances;

It further appearing to the Court that Plaintiff on the 30th day of March, 1998, deposited with the Cook County Treasurer the total sum found by the Court; That the Plaintiff filed suit July 8, 1996;

**IT IS HEREBY ORDERED AND ADJUDGED** that the Plaintiff, City of Calumet City, be vested with fee simple title to the following described property on the 30th day of March, 1998.

Lots 24 and 25 in Block 2 in Snydacker and Amb's Illinois Addition to Hammond, a Subdivision in Section 8, Township 36 North Range 15 East of the Third Principal Meridian, in Cook County, Illinois.

ADDRESS OF PROPERTY: 221 Plummer Avenue, Calumet City, IL 60409

PERMANENT TAX NO. 30-08-203-001-0000

**IT IS HEREBY FURTHER ORDERED AND ADJUDGED** that Plaintiff is authorized to take possession of and use said property on the 30th day of March, 1998.

**ENTERED**

ENTER

SIXTH MUNICIPAL
DISTRICT CIRCUIT
COURT COOK
COUNTY

**OCT 26 1999**

**JUDGE CLAUDIA**
**G. CONLON 1-1636**

_____
JUDGE

EDWARD A. ANTONIETTI, #40649
GULOTTA & KAWANNA
Attorneys for Plaintiff
1400 Torrence Avenue, Suite 201

Calumet City, IL 60409 (708) 891-1900

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS MUNICIPAL DEPARTMENT, SIXTH
DISTRICT

| | | |
|---|---|---|
| CITY OF CALUMET CITY, | ) | |
| A Municipal Corporation, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | NO. 96M 3362 |
| | ) | |
| Elizabeth Moore, Robert Moore | ) | |
| NON-RECORD CLAIMANTS, | ) | |
| And UNKNOWN OWNERS, | ) | |
| | ) | |
| Defendants. | ) | |

**JUDGMENT ORDER**

NOW COMES the Plaintiff, CITY OF CALUMET CITY, a Municipal Corporation, and moves for entry of a Judgment Order in the above cause as follows:

1. That this action was filed on July 8, 1996 by the CITY OF CALUMET CITY to ascertain the just compensation for taking certain property for public purposes.

2. That all Defendants have been duly served with

Summons and have served with process.

3. That the property is legally described as follows:

Lots 24 and 25 in Block 2 in Snydacker and Amb's Illinois Addition in Section 8 , Township 36 North Range 15, East of the Third Principal Meridian in Cook County, Illinois.

ADDRESS OF PROPERTY: 221 Plummer St. Calumet City, IL 60409

PERMANENT TAX NO. 30-08-203-001-0000

4. That pursuant to the jury verdict of December 8, 1997, and the Order of Court directing a verdict, the Court finds that the fair market value of the property is SIX THOUSAND FIVE HUNDRED($6,500.00) DOLLARS.

5. That CITY OF CALUMET CITY shall deposit the total compensation with the County Treasurer on or before January 23, 1998.

6. That the Order Vesting Title to the CITY OF CALUMET CITY shall issue upon deposit of the compensation with the County Treasurer.

7. That the balance of the proceeds after the Payment of the unpaid taxes shall be paid to Robert H. Moore.

8. That this matter is continued to January 26, [1988](1998) at 9:00 a.m., for entry of an Order Vesting Title.

**ENTERED**
SIXTH MUNICIPAL
DISTRICT, CIRCUIT

COURT OF COOK
COUNTY
DEC 18 1997

.....

ENTER:

Judge Claudia G.
Conlon-1636
"s/Conlon"

JUDGE

EDWARD A. ANTIONIETTI, #40649
GULOTTA & KAWANNA
Attorneys for Plaintiff
1400 Torrence Avenue, Suite 201
Calumet City, IL 60409
(708) 891-1900

.....

**ILLINOIS EMINENT DOMAIN PRACTICE**
**1995**

Chapters Authors
Celeste P. Cinquino
Leo N. Cinquino et al.

**IICLE**

ILLINOIS INSTITUTE FOR CONTINUING LEGAL
EDUCATION
2395 WEST JEFFERSON
SPRINGFIELD, IL 62702

"I [1.1] OVERVIEW

This book sets forth in significant detail the various components of an eminent domain, or government condemnation action. It is designed to give the practitioner background on basic

principles of eminent domain in a short order. While this book does not pretend to be a complete treatise on the subject, it is intended as a practical guide to help practicing attorneys solve the problems that they frequently encounter in eminent domain cases.

The goal of this introductory chapter to the book is to address the following basic issues concerning the power of eminent domain:

a. What is the power of eminent domain, and what are its Limitations?

b. What is the source of power of eminent domain?

c. Who can exercise the power of eminent domain?

d. How is the power of eminent domain exercised?

This chapter also provides a skeletal outline of a typical eminent domain action in the courts of the State of Illinois, from the profiling stage to the vesting of title in the condemning authority. While this outline is by no means exhaustive, the remaining chapters in this book explain in detail, manly of the significant factors of which the practicing attorney must be cognizant in preparing and litigating an eminent domain case.

## II. [1.2] THE POWER, ITS SOURCE, AND ITS LIMITATIONS

Eminent domain is the inherent right of the sovereign to condemn or appropriate private property for public use. The power is inherent in the sovereign and exists separately from any constitution, or statutory laws. *Department of Public Works & Buildings v. Kirkendall*, 415 Ill. 214, 112 N.E. 2d 611 (1953); *Department of Public Works v. McNeal*, 33 Ill. 2nd 248, 211 N.E. 2d 266(1965). The sovereign has the right to assume possession of all real property held by its subjects. Every person who acquires of occupies land does so at the risk of

being evicted by exercise of the superior right of the state. *Green Street Association v. Daley*, 373 F. 2d 1, 6(7th Cir.) cert. Denied, 387 U.S. 932(1967).

The source of the power of eminent domain predates our state and federal Constitutions. Constitutional provisions and statutes do, however, limit and regulate the power of eminent domain. *See Department of Public Works & Buildings v. McNeal, supra.* For example, the Fifth and Fourteenth Amendments to the United States Constitution provide in pertinent:

> ***No* person shall be...deprived of life, liberty, or Property, Without due process of law: nor shall private Property be Taken for public use, without jus compensation.** U.S. CONS. AMEND. V.

> **No State shall...deprive any person of life, liberty, or property, without due process of law.** U.S. CONST. AMEND. XIV § 1.

The Illinois Constitution provides the following:

> **Private property, shall not be taken or damaged For publiv Use without just compensation as Provided by law. Sucvh Compensation shall be Determined by jury as provided by Law.** ILL. CONST. ART 1 § 15.

Traditionally, the sovereign could appropriate private property without limitation. Today, a government entity is authorized to acquire private property only for a necessary public use. But as recently as the nineteenth century, no public use requirement existed. *See Missouri Pacific Ry. v. Nebraska*, 164 U.S. 403, 42 L. Ed. 489, 17 S. Ct. 130(1896). While the "public use" and "necessity" requirements are pivotal under modern eminent domain law, the enormous expansion of the range of governmental services has severely diluted both requirements.

*See Deerfield Park District v. Progress Development Corp.*, 26 Ill. 2d 296, 186 N.E. 2d 360(1962), *cert. Denied, City of Oakbrook Terrace v. La Salle National Bank*, 186 Ill. App. 3d 343, 542 N.E. 2d 478, 134 Ill. Dec., 299(2d Dist. 1989).

While the concept of eminent domain arguably existed as far back as ancient Greece and Rome, it truly came into focus during the development of the English law. The British monarch could employ one of several procedures to acquire property for public use. Errol E. Meidinger, The *"Public Uses" of Eminent Domain History and Policy*, 11 Envtl.L. 1, 7, 9(1980) (Meidinger). For example, the common law recognized that the monarch had the prerogative to enter private property to defend against either a public enemy or the inroads of the sea. Julius L. Sackman, NICHOLAS ON EMINENT DOMAIN § 1.21 at 1-71(rev. 3d ed. 1995). The monarch enjoyed the rights of purveyance and preemption, which enabled him to seize provisions for the use of the royal household without consent of the owner but which also obliged the monarch to for these provisions as a fair price. The monarch could also employ the ancient proceeding known as "inquest of office." This proceeding bears the strongest resemblance to the power of eminent domain as we know it today. "Inquest of office" is an inquiry by jurors into any matter that entitled the monarch to the possession of lands, tenements, goods, and chattels.

In America, the use of eminent domain occurred early in the settlement of the American colonies and developed rapidly as the need for roads, public facilities and industry grew. By the end of the colonial period, eminent domain was fairly well established as a legal form. In addition, compensation was routinely, although not universally, paid, and some form of legal proceeding was regularly available, Meidinger, p. 16.

Shortly after the Revolutionary War, the use of eminent domain expanded from public roads and buildings to private facilities. However, challenges to the increasingly private use of eminent domain were not formally raised until the process was well under way. In 1832, several defendant property owners

challenged a New Jersey statute granting a private corporation the right to acquire land for 70 mill sites along a six-mile stretch of Delaware River, *Scudder v. Trenton Delaware Falls Co.*, 1 N.J. Eq. 694 (1832). The court upheld the statue on the ground that the community as a whole would be benefited. By 1870, similar acts had been upheld in seven states. Meidinger, p. 24.

Judicial sanction of these statutes spawned opposition. A number of courts, led by those in New York, struck down private eminent domain authorizations, stating that the public use clause in the Fifth Amendment literally meant use by the public, Meidinger, p. 24. In 1896, the United States Supreme Court held explicitly that the Fifth Amendment public use requirement applied to the states through the due process clause of the Fourteenth Amendment. *Missouri Pacific Ry. v. Nebraska, supra.* Although the Court subsequently established loose standards for the public use requirement and allowed the states great latitude in delegation of that power, it did seek to prevent abuses by tightening the compensation requirement. *See United States v. Lynah,* 188 U.S. 445, 47 L. Ed. 539, 23 S. Ct. 349(1903).

Today, the public use standard is flexible enough to allow practically any taking, but it does leave some room for invalidation if a court determines the taking has no public benefit or is a clear abuse of discretion. *See Deerfield Park District v. Progress Development Corp., supra.*

## III. AUTHORITY TO EXERCISE THE POWER OF EMINENT DOMAIN

### A. [1.3] State of Illinois

The State of Illinois, as a "sovereign," has the power to acquire private property for public use. This inherent power is limited by the state Constitution and is regulated state stature. See the eminent domain statute in the Illinois Code of Civil Procedure(CCP), 735 ILCS 5/7-101, *et seq.* The source of the

power of eminent domain for all other subdivisions of the state, if it exists at all, is the state legislature.

### B. [1.4] Local Government

The Illinois legislature has specifically delegated the power of eminent domain to many of its political subdivisions. A current list of the various governmental entities in Illinois to whom the state legislature has conferred the power of eminent domain, and the statutory source and purpose of that power, is set forth in the Appendix to this Chapter.

## IV. THE EXERCISE OF THE POWER OF EMINENT DOMAIN: A TYPICAL EMINENT DOMAIN ACTION

### A. [1.5] Prerequisite To Filing the Complaint

Depending on the project and the nature and scope of the action, the number of prerequisites the practitioner must satisfy will vary. Detailed explanations of the prerequisites are discussed later in this book. The major prerequisites to filing are set forth below.

#### 1. [1.6] Authority, Public Purpose, and Necessity

There are three jurisdictional prerequisites to exercising the power of eminent domain in Illinois. First, the condemning authority must have the statutory authority to acquire private property. *Department of Transportation v. First Galesburg National Bank & Trust Co.*, 141 Ill. 2d 462, 566 N.E. 2d 254, 152 Ill. Dec. 567 (1990); *Department of Public Works & Buildings v. Keller*, 61 Ill. 2d 320, 335 N.E. 2d 443 (1975); *Town of Libertyville v. Bank of Waukegan*, 152 Ill. App. 3d 1066, 504 N.E. 1305, 105 Ill. Dec. 787(2d Dist.), *appeal denied*, 116 Ill.2d 560 (1987). Second, the taking must be for a public purpose. *Chicago v. Barnes* , 30 Ill. 2d 255, 195 N.E. 629(1964); *Lake Louise Improvement Association v. Multimedia Cablevision of Oak Lawn, Inc.* 157 Ill. App. 3d 713, 510 N.E. 2d 982. 109 Ill. Dec. 914(1st Dist., 1987). Third,

the taking must be necessary(*People ex rel. Director of Finance v. YWCA of Springfield*, 86 Ill. 2d 219, 427 N.E. 2d 70, 55 Ill. Dec. 950(1981), although the condemning authority has broad discretion in determining necessity. *Department of Public Works & Buildings v. Keller, supra.*

### 2. [1.7] Negotiation with Property Owner

CCP §7-102 requires the condemning authority to make good-faith(bona fide) attempt to negotiate with the property owner before filing a condemnation complaint. *Trustees of Schools v. First National Bank*, 49 Ill. 2d 408, 274 N.E. 2d 56(1971); *Lake County Forest Preserve District v. First National Bank*, 200 Ill. App. 3d 354, 558 N.E. 2d 721, 146 Dec. 758(2d Dist.), *appeal denied*, 135 Ill. 2d 557(1990). It is a wise practice for the condemning authority to reduce its final bona fide offer to the property owner to some written form. In order to adequately satisfy the condemning authority's duty to attempt to agree, the written bona fide offer should include the following:

a. the name and address of the owner;
b. the legal description or common address of the property to be taken(in partial takings this can be somewhat complicated, which is why it us s practice to have the legal description prepared by a title company or licensed surveyor);
c. the amount of the offer;
d. the type of interest sought(fee simple, an easement, etc.);
e. an invitation to discuss the offer.

The bona fide offer must remain open for a reasonable period of time so that the property owner may consider it. *Illinois State Toll Highway Authority v. Karn*, 9 Ill. App. 3d 784, 293 N.E. 162(2d Dist. 1973). If a counteroffer is made by the property owner, the condemning authority is obliged to respond to it and must do so in writing. *Department of Transportation v. Walker*, 80 Ill. App. 3d 1039, 400 N.E. 2d 956, 36 Ill. Dec. 376(3d Dist. 1980)."

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CASE NO. 87234

5. PETITION FOR LEAVE TO APPEAL

**ILLINOIS APPELLATE COURT, FIRST DISTRICT**
CASE NO. 1-98-0059

6. BRIEF AND ARGUMENT OF PLAINTIFF-APPELLANT
7. BRIEF AND ARGUMENT-APPELLEE
8. MY RECORD ON APPEAL
9. MY SUPPLEMENTAL RECORDS ON APPEAL-VOLUMES 1, 2, & 3

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**SUPREME COURT OF THE UNITED STATES**
**OFFICE OF CLERK**
**WASHINGTON, D. C. 20543-0001**

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202-479
3011

November 23, 1999

Mr. Robert H. Moore
429 Waltham Street
Hammond, IN 46320

Re: Robert H. Moore
v. City of Calumet City
Application No. 99A438

Dear Mr. Moore:

The application for an extension of time within which to file petition for a writ of certiorari in above-entitled case has been been presented to Justice Stevens, who on November 23, 1999, extended time to and including March 4, 2000.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM
K. SUTER

Clerk

By "s/ Loretta S. Ruffin"
Assistant Clerk

NOTIFICATION LIST

Mr. Robert H. Moore
429 Waltham Street
Hammond IN 46320

Mr. Edward A. Antonietti
Gulotta & Kawanna
1400 Torrence Avenue
Calumet City, IL 60409

Clerk
Appellate Court of Illinois,
First District
160 N. LaSalle
14th Floor
Chicago IL 60601

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1. PETITION FOR LEAVE TO APPEAL-SUPREME COURT OF ILLINOIS
2. BRIEF AND ARGUMENT OF PLAINTIFF-APPELLANT, ILLINOIS APPELLATE COURT, FIRST DISTRICT
3. BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE, ILLINOIS APPELLATE COURT, FIRST DISTRICT
4. REPLY BRIEF AND ARGUMENT OF PLAINTIFF-APPELLANT, ILLINOIS APPELLATE COURT, FIRST DISTRICT

INDEX TO THE RECORD


| Record on Appeal | Page(s) |
|---|---|
| 1. 12/18/97 PACITA-APPEALS | C1 |
| 2. 9/9/96 TO 2/6/98 ORIGINAL FILES-CIRCUIT COURT OF COOK COUNTY, 6TH DISTRICT | C2-5 |
| 3. 2/20/98 ORDER FOR CONTINUANCE TO MARCH 20, 1998 | C6 |
| 4. 2/6/98 ORDER FOR CONTINUANCE TO FEBRUARY 6, 1998 | C7 |
| 5. 12/18/97 JUDGMENT ORDER | C8-9 |
| 6. 12/17/97 ORDER FOR JUDGMENT AND CONTINUANCE | C10 |
| 7. 12/18/97 ORDER FOR JURY TO EXECUTE A VERDICT THAT THE FAIR CASH MARKET VALUE OF MY PROPERTY BE $6,500.00-A DIRECTIVE AUTHORED BY THE PLAINTIFF'S ATTORNEY AND AGREED BY THE COURT | C11 |

8. 11/24/97 ORDER FOR MATTER TO BE SET FOR TRIAL..... C12
9. 11/24/96 ORDER FOR JURY TRANSPORT TO VIEW MY SITE.....C13
10. 10/7/97 ORDER FOR CONTINUANCE-TIME FOR DEFENDANT'S ATTEMPT TO OBTAIN COUNSEL.....C14
11. 9/30/97 ORDER FOR HEARING ON JURY INSTRUCIONS, PLAINTIFF'S MOTION IN LIMINE, PLAINTIFF IS PROHIBITED FROM ENTERING EVIDENCE FOR VALUE OF DEFENDANT'S PROPERTY, ENTRY OF JURY INSTRUCTIONS BY LITIGANTS, AND RECUSE OF JUDGE CONLON IS DENIED. ALL ORDERS, BY THE WAY, ARE AUTHORED BY THE PLAINTIFF'S ATTORNEY(S) AND AGREED TO BY THE COURT .....C15
12. ORDER FOR CAUSE BE SET FOR TRIAL AND JURY INSTRUCTIONS.....C16-17
13. 8/29/97, 7/18/97 ORDER OF DEFAULT AGAINST DEFENDANT BY COURT ORDER FOR DEFAULT(FAILING TO APPEAR) AGAINST THE DEFENDANT AND MATTER SET FOR PROVE-UP..... C18-21
14. 7/7/97 MOTION FOR DISMISSAL OF LAWSUIT.....C22-26
15. 7/97 MOTION FOR RECUSE OF JUDGES CLAUDIA G. CONLON AND PATRICK S. GROSSI .....C27
16. 6/697 MOTION FOR CONTINUANCE..... C28
17. 7/2/97 MOTIONS FOR DISMISSAL AND SETTLEMENT BY THE DEFENDANT IS DENIED AND STRICKEN BY THE COURT BY ORDER WRITTEN BY PLAINTIFF'S LAWYER..... C29
18. 4/10/97 &3/7/97 O,RDERS CONCERNING PLAINTIFF'S MOTION IN LIMINE..... C30-31
19. 3/7/97 MOTION FOR POSTPONEMENT FOR COURT HEARINGS FOR MEDICAL REASONS AND SUBMISSION OF JURY INSTRUC-

TIONS..... C32-35
20. 3/7/97 LETTERS CONCERNING PLAINTIFF'S MOTION IN LIMINE..... C36-39
21. 2/11/97 PLAINTIFF'S INTERROGATORIES (BLANK ENTREES)..... C40-45
22. 12/31/96 PLAINTIFF'S DISCLOSURE OF EXPERT WITNESS ..... C46-47
23. 9/19/95 APPRAISAL REPORT BY THE GORMAN GROUP(I HAD SOME STRONG QUESTIONS/OBJECTIONS/COMMENTS)... C48-84
24. 12/10/96 ORDER BY PLAINTIFF'S ATTORNEY AND STAMPED BY JUDGE RICHARDSON/ CLERK(JURY INSTRUCTIONS & TRIAL DATE)..... C85
25. 11/4/96 ORDER FOR CONTINUANCE- JUDGE CONLON..... C86
26. 10/1/96 ORDER FOR CONTINUANCE - JUDGE RICHARDSON..... C87
27. 9/11/97 MOTIONS FOR DISMISSAL OF LAWSUIT AND RECUSE OF JUDGE CONLON SENT BY MAIL TO CHIEF JUDGE SHEILA MURPHY..... C88-91
28. 9/9/96 ORDER FOR CONTINUANCE AND CHANGE OF ROOM BY JUDGE ROSSI..... C92
29. 9/5/96 & 8/8/96 MY JURY DEMAND AND RECEIPT FOR WHICH I SHOULD GET A REFUND.....C93-96
30. 8/8/96 ANSWERS TO MISSING QUESTIONS..... C97
31. 8/8/96 SUMMONS..... C98-100
32. 8/8/96 LIS PENDENS NOTICE..... C101
33. 8/8/96 AFFIDAVIT FOR PUBLICATION FROM PLAINTIFF'S ATTORNEYS.....C102-103
34. 8/8/96 AFFIDAVIT TO UNKNOWN OWNERS.C104-105
35. 8/8/96 COMPLAINT FOR CONDEMNATION.C106-110
36. 12/24/94 ORDINANCE ADOPTING TAX INCREMENT FINANCING FOR THE PLAINTIFF.....C111-120

37. CERTIFICATION OF THIS RECORD..... C121

INDEX TO THE SUPPLEMENTAL RECORDS

Volume 1 Page(s)


1. PACITA-APPEALS..... C1
2. 8/96, 9/6 &26/96 REAL ESTATE TRANSFER DECLARATIONS(RETDS).....C2-4
3. 1990-1992 MY TAX ASSESSMENT RECORD..... C5
4. 7/3/97 MOTION BY ME FOR DISMISSAL OF LAWSUIT.....C6-9
5. 7/3/97 MOTION BY ME FOR RECUSE OF JUDGES CLAUDIA G. CONLON AND PATRICK S. GROSSI.....C10-11
6. 7/3/97 MOTION BY ME TO PLAINTIFF'S ATTORNEY FOR DISMISSAL OF LAWSUIT.....C12-14
7. UNDATED UNRECORDED AND UNSCHEDULED DISCUSSION OF A MOTION FOR SETTLEMENT OF $150,000.00.....C15-18
8. 11/21/96 LETTER FROM ATTORNEY FIRM OF SCARIANO ET. AL. OF OFFER OF $6,500.00 FOR MY PROPERTY.....C19
9. 12/6/96 LETTER FROM THE CENTER OF CONFLICT RESOLUTION OF UNSUCCESSFUL EFFORTS TO SCHEDULE A MEDIATION CONFERENCE WITH THE PLAINTIFF'S ATTORNEY(S).....C20
10. 1997-1998 RECEIPTS OF REGISTERED MAILS SENT TO PLAINTIFF'S ATTORNEYS, CIRCUIT COURT CLERK, JUDGES, CIRCUIT JUDGES, CIRCUIT COURT ADMINISTRATOR, ETC., INVOLVING MY MOTIONS, LETTERS, CONTAIN VARIOUS RECORDS OF APPEAL.C21-31
11. 9/4/97 ARTICLE ON TAX INCREMENT FINANCING.....C32
12. 1994 ARTICLE ON CONDEMNATION.....C33
13. UNDATED ARTICLE ON EMINENT DOMAIN.....C34
14. UNDATED ARTICLE ON TRIAL PROCEDURE AND THE APPRAISAL PROCEDURE..... C35
15. 8/22/96 & 6/14/96 MORE BUT IMPORT-

ANT RETD(S)..... C36-38
16. 9/9/96 NEXT DOOR NEIGHBOR TAX REPORTS.....C39-40
17. 3/20/98 REQUEST FOR PREPARATION OF THIS RECORD.....C41
18. NO DATE ROUGH DRAFT OF THE TABLE OF CONTENTS OF THIS VOLME.....C42-45
19. 2/23/98 CERTIFICATION OF THIS VOLUME 1..... C46
20. 2/24/98 APPEAL RECORD RECEIPT OF THIS VOLUME 1 UNDATED FORM APPEAL TO THIS APPELLATE COURT FROM THE CIRCUIT COURT..... C47
21. 12/18/97 PLACITA-APPEALS..... C48
22. 10/4/97 LETTER TO COURT ADMINISTRATOR JOY L. LEE OF SIXTH MUNICIPAL DISTRICT CIRCUIT COURT OF COOK COUNTY, ILLINOIS, MARKHAM ILLINOIS (MOST INCOMPLETE)..... C49
23. 10/4/97 MOTION BY ME FOR CONTINUANCE AND CHANGE OF VENUE TO JUDGE G. CONLON.....C50,52
24. 9/11/97 MOTION BY ME FOR RECUSE OF JUDGE CLAUDIA G. CONLON TO CHIEF JUDGE SHEILA MURPHY..... C51,53
25. 9/11/97 MOTION BY ME FOR DISMISSAL OF LAWSUIT..... C54,55
26. 8/7/97 LETTER TO CHIEF JUDGE SHEILA MURPHY INFORMING HER OF THE NO RESPONSES OF VARIOUS PEOPLE TO MY DIFFERENT MOTIONS(DISMISSALS, RECUSES ETC.)..... C56,57
27. 2/7/97 A PREVIOUS LETTER TO CHIEF JUDGE SHEILA MURPHY COMPLAINING IN EFFECT ABOUT THAT I COULD NOT DEPEND ON WHICH JUDGE I WILL FACE AT ANY TIME IN THE FUTURE.....C58,59
28. 7/3/97 PARTIAL MOTION BY ME FOR RECUSE OF JUDGES CONLON AND GROSSI..... C60
29. 2/13/98 POST CARD INFORMING

ME OF STATUS CALL FOR 7/20/98.....C61,62
30. 10/4/97 & 9/6/97 MOTIONS BY ME FOR CONTINUANCE, CHANGE OF VENUE, AND DISMISSAL OF THE EMINENT DOMAIN LAWSUIT AGAINST ME.....C63-68
31. 9/18/97 LETTER TO MS. AURELIA PUCINSKI INFORMING HER OF THE DIFFICULTIES I EXPERIENCED WITH MARKHAM OFFICE REGARDING OF GETTING RESPONSES FROM MY VARIOUS MOTIONS..... C69
32. 9/6/97 & 7/3/97 COPIES OF MOTIONS TO MS. AURELIA PUCINSKI FOR RECUSE OF JUDGE PATRICK S. GROSSI AND CLAUDIA G. CONLON.....C70-75
33. 7/3, 2/22, 3/7, & 3/97 MOTIONS TO PLAINTIFF'S ATTORNEY(S) FOR POST-PONEMENT OF JURY INSTRUCTIONS, AND FOR THE CIRCUIT COURT TO APPOINT THREE(3) INDEPENDENT APPRAISERS FOR WHICH JUDGE CONLON AND ATTORNEY GAVE THE ANSWER "WHO GOING TO PAY FOR IT".....C76,78-84
34. 11/25/97 LETTER TO PLAINTIFF'S ATTORNEY ABOUT ORDERING A BUS TO VISIT MY PROPERTY..... C77
35. 3/7/97 MOTION BY ME TO PLAINTIFF'S ATTORNEYS FOR THE COURT TO APPOINT THREE INDEPENDENT APPRAISERS FOR THEIR APPRAISALS(BOTH COURT AND OPPOSING ATTORNEY SAID "NO").....C82-84
36. 5/29/96 LETTER OF OFFER FROM PLAINTIFF'S ATTORNEY(S)..... C 85
37. 6/4/96 LETTER FROM LAW FIRM OF SCARIANO ET. AL. WITH A OFFER AND ADVISE..... C86
38. 9/6/97 MOTION BY ME TO MS. AURELIA PUCINSKI FOR RECUSE OF JUDGE CLAUDIA G. CONLON.....C87-88
39. 7/2/97 MOTION BY ME TO DISMISSAL OF LAWSUIT .....C89-92

40. 8/8/96 A FILED ANSWER FORM.....C93
41. 9/5/96 AN APPEARANCE AND JURY DEMAND FORM AND MY RECEIPT FOR JURY TRIAL OF $200.00 TO ASSURE I WOULD GET A JURY TRIAL(I SHOULD GET A REFUND SINCE I WAS THE DEFENDANT AND IT WAS THE PLAINTIFF WHO DEMANDED A JURY TRIAL).....C94
42. 9/11/96 A LETTER FROM PLAINTIFF'S ATTORNEY TO DISCUSS A SETTLEMENT..C95
43. 9/9/96 ORDER AUTHORIZED BY PLAINTIFF'S ATTORNEY FOR CONTINUANCE AND TRANSFERENCE OF CASE TO ANOTHER ROOM..... C96
44. 9/6/96 MOTION BY ME FOR RECUSE OF JUDGE PATRICK S. GROSSI..... C97
45. 3/7/97 MOTION TO DISMISS LAWSUIT..... C98-101
46. 12/10/96 ORDER-JURY INSTRUCTION AND DATE FOR TRIAL WRITTEN BY PLAINTIFF'S ATTORNEY AND STAMPED BY THE COURT.C102
47. 9/20/96 ORDER WHICH SETS DATES FOR COMPLETING DISCOVERY PROCEDURES, PRE-TRIAL HEARINGS, MANDATORY ARBITRATION, AND MANAGEMENT CONFERENCE-ALL OF THE ABOVE NEVER HAPPENED.....C103
48. NO DATE UNIMPORTANT INFORMATION.C104
49. NO DATE MOTION FOR DISMISSAL OF LAWSUIT..... C105
50. NO DATE LIST OF SOME PROPERTIES THAT WERE NOT CONDEMN OR TAKEN IN THE REDEVELOPMENT PROJECT(TIF)..... C106
51. 12/18/97 VERDICT FORM A-JURORS SIGNATURES..... C107
52. 3/30/98 CERTIFICATIONS SUPPLEMENTAL RECORD-VOLUME 1.....C108-09

INDEX TO THE SUPPLEMENTAL RECORD

VOLUME II

Page(s)


1. 12/18/97 PACITA-APPEALS..... C1,5
2. NO DATE. TABLE OF CONTENTS-VOLUME II- HANDWRITTEN ..... C2-3
3. NO DATE. REQUEST FOR PREPARATION OF THIS VOLUME..... C4
4. NO DATE. APPEAL TO APPELLATE COURT..... C6
5. 1/6/98 NOTICE AND ACKNOWLEDGEMENT OF NOTICE OF APPEAL..... C7-10, 12
6. 9/97 ARTICLES "CALUMET CITY WELCOMES NEW PLANT TO "SIN STRIP" AND "BURBS IN BRIEF""(PLAINTIFF'S PRIVATE USE ETC. IN THE TIF AREA)..... C11,70
7. 12/6/96 LETTER FROM CENTER FOR CONFLICT RESOLUTION INFORMING ME THAT THE PLAINTIFF'S ATTORNEYS REFUSE MEDIATION..... C13
8. 1/9/98 COPY OF REQUEST FOR PREPARA- OF RECORD OF APPEAL..... C14
9. 1/6/98 & 1/13/98 COPIES OF RECEIPTS FOR RECORD APPEAL AND DOCKET FEE..... C15
10. 10/22/97 LETTER FROM ATTORNEY C. CINQUINO STATING THAT DUE TO MY SILENCE SHE IS WITHDRAWING FROM THIS CASE.....C16,17
11. 12/1/94 NOTICE OF PUBLIC HEARING...RE DEVELOPMENT PROJECT AREA..... C18-20
12. 4/16/96 NOTICE OF PUBLIC HEARING CONCERNING USE/PURPOSE OF REDELOPMENT AREA..... C21-26
13. 9/19/95 APPRAISAL CERTIFICATE ETC. .....C27-28
14. 1991 & 1997 MY PROPERTY ASSESSMENT & TAX BILL.....C29-30
15. NO DATE. JURY INSTRUCTIONS.....C31
16. NO. DATE. JURY INSTRUCTIONS FROM PLAINTIFF'S ATTORNEY(S)..... C31-35 & 37-41

17. 12/3/96 REAL ESTATE TRANSFER DECLARATIONS(RETD(S)..... C36
18. 1/10/94 RULE 222..... C42
19. NO DATE. CIVIL PROCEDURE; "INSTRUCTING THE JURY"..... C43
20. 2/11/97 LETTER TO CONGRESSMAN ARLINE FANTIN REQUESTING COPIES OF ALL RETD(S) OF THE REDEVELOPMENT AREA WITH NO REPLY..... C44
21. 12/194 CONTINUATION OF NOTICE OF PUBLIC ...REDEVELOPMENT PROJECT AREA..... C45-46
22. NO DATE. NOTES RETD(S)..... C47
23. 5/94 ARTICLE "PROPERTY RIGHTS"..... C48-53
24. 5/6/99, 2/7/62, & 11/6/91 A FEW EXAMPLES OF MY EDUCATIONAL AND PROFESSIONAL BACKGROUND..... 54-56
25. NO DATE. A LISTING OF SOME OF SALES OF PROPERTY BOUGHT BY THE CITY OF CALUMET CITY, ILL. ..... C57-62
26. NO DATE. MAPOF REDEVELOPMENT AREA-CALUMET CITY, ILL. ..... C63
27. NO DATE. ARTICLE TITLED "BASIC GOALS OF DISCOVERY"..... C64
28. 1994 ARTICLE "CONDEMNATION..... C65
29. NO DATE. IMPORTANT ARTICLE ON "PRIVATE USE" ..... C66
30, SUMMER/96, 2/9/96, SPRING/98 ARTICLES ON PROPERTIES ADJACENT TO CALUMET CITY'S REDEVELOPMENT AREA BUT IN HAMMOND, INDIANA(MAY HAVE IMPLICATIONS FOR MY KEEP MY PROPERTY AND/OR JUST COMPENSATION)..... C67,68 73 & 96
31. 12/1/94(APPROX.) CRITIQUE ARTICLE ON THE MERITS OF THE INVOLVED PROGRAM BY MR. SKAGERBERG..... C69
32. 2/11/97, 12/29/97 ARTICLES WHICH ARE CRITICAL OF THE PLAINTIFF BY VARIOUS PEOPLE..... C71, 76-77
33. 2/12/97 FRONT PAGE COVERAGE OF THE

DISPUTE BETWEEN PLAINTIFF AND ME OVER THE TAKING AND JUST COMPENSATION OF MY PROPERTY..... C72-72,5, 74-75
34. NO DATE. EXPLANATIONS OF EMINENT DOMAIN & CONDEMNATION..... C78-80
35. 23/6/92 POLICE REPORT OF MYSTERIOUS CRIMINAL DAMAGE TO MY BUILDING BY A STOLEN CAR. NOTHING WAS DONE ABOUT IT .....C81-82
36. 8/12/92 RECEIPT OF DEMOLITION OF MY HOUSE AFTER CITY ORDER GOT A COURT ORDER TO CONDEMN IT.....C83
37. 3/5/97 A DOCTOR NOTE EXPLAINING WHY SOME OR ALL OF MY ABSCENCES FROM VARIOUS COURT HEARINGS..... C84
38. 3/98 PICTURES SHOWING PROPERTIES THAT APPARENTLY EXCUSED FROM CITY TAKING AND A FACTORY(PRIVATE USE) PLUS NEW HOMES CONTIGUOUS TO THE REDEVELOPMENT AREA..... C85-90
39. 10/9/97 CONTRACT FROM CELESTE CINQUINO, ATTORNEY..... C91-92
40. 4/10/98 PHOTO OF SIGN FORBIDDING RECORDING DEVICES(AUDIO & VIDEO) IN MARKHAM CIRCUIT COURT..... C93
41. 4/14/98 CERTIFICATION AND PREPARATION OF SUPPLEMENTAL RECORD VOLUME II..C94-95
42. 4/14/98 APPEAL TO THE APPELLATE COURT FROM COOK COUNTY CIRCUIT COURT BOTH OF ILLINOIS..... C97

INDEX TO THE SUPPLEMENTAL RECORD

VOLUME III Page(s)

1. 12/18/97 PACITA-APPEALS..... C1
2. SPRING/98 ARTICLE "DOWNTOWN URBAN RENEWAL"..... C2
3. 9/22/96 "HAMMOND DEVELOPER, CITY REACH PACT..... C3
4. 9/27/97 OR 96? ARTICLE "FOR SALE: 570 ACRE..." ..... C4-5
5. 9/26/97 ARTICLE "STEEL MILL OFFERED FOR HOUSING..."(NO CITY CONDEMNATION AND/OR USE OF EMINENT DOMAIN POWER..... C6-9
6. 10/26/97 ARTICLE ON EXPLANATION OF TIF ..... C10-12
7. 10/26/97 ARTICLE "TIF A COSTLY TOOL... C13-14
8. 1995 ARTICLE "ILLINOIS EMINENT DOMAIN PRACTICE"..... C15-20
9. 1995 [1.5] PREREQUISITES TO FILING THE COMPLAINT([1.6] AUTHORITY, PUBLIC PURPOSE, AND NECESSITY.....C18-19
10. 1995 [1.7] THE BONA FIDE OFFER .....C19
11. 96-98 COPY OF "THORNTON TOWNSHIP OFFICIALS" ..... C20.5
12. 5/5/98 POLITICAL CANDIDATE AGAINST URBAN REDEVELOPMENT ..... C20.6
13. 5/5/98 CERTIFICATION OF VOLUME III OF SUPPLEMENTAL RECORDS..... C21
14. 5/5/98 APPEAL TO THE APPELLATE COURT FROM COOK COUNTY CIRCUIT COURT OF ILLINOIS..... C22

No. 87234

IN THE
SUPREME COURT OF THE STATE OF ILLINOIS

---

ROBERT H. MOORE,

Plaintiff-Petitioner,

vs.

CITY OF CALUMET CITY,
ILLINOIS,

Defendant-Respondent.

---

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on June 6, 1999, the undersigned filed with the Chicago, Illinois branch Clerk of the Illinois Supreme Court Petitioner's Motion To Extend Time For Leave To Appeal, a copy of which is attached hereto and hereby served upon you.

"s/ Robert H. Moore"
Robert H. Moore

Plaintiff-Petitioner, pro se

Robert H. Moore
429 Waltham Street
Hammond, IN 64320
(219) 931-9011